

from the date of entry or until the required document is submitted, whichever comes first. In the event that documentation is not submitted before liquidation, the merchandise will be classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

[CBP Dec. 10-33, 75 FR 69585, Nov. 15, 2010; CBP Dec. 12-02, 77 FR 10369, Feb. 22, 2012; CBP Dec. 15-14, 80 FR 61284, Oct. 13, 2015]

RATE OF DUTY DEPENDENT UPON
ACTUAL USE

§ 10.131 Circumstances in which applicable.

The provisions of §§10.131 through 10.139 are applicable in those circumstances in which the rate of duty applicable to merchandise is dependent upon actual use, unless there is a specific provision in this part which governs the treatment of the merchandise. However, specific marking or certification requirements, such as those for bolting cloths in section 10.58, may be applicable to merchandise subject to the provisions of sections 10.131-10.139.

[T.D. 71-139, 36 FR 10726, June 2, 1971, as amended by T.D. 86-118, 51 FR 22515, June 20, 1986]

§ 10.132 [Reserved]

§ 10.133 Conditions required to be met.

When the tariff classification of any article is controlled by its actual use in the United States, three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular subheading of the Harmonized Tariff Schedule of the United States applicable to the merchandise specifies other conditions. The conditions are that:

- (a) Such use is intended at the time of importation.
- (b) The article is so used.
- (c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

[T.D. 71-139, 36 FR 10726, June 2, 1971, as amended by T.D. 89-1, 53 FR 51252, Dec. 21, 1988]

§ 10.134 Declaration of intent.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by entering the proper subheading of an actual use provision of the Harmonized Tariff Schedule of the United States (HTSUS) and the reduced or free rate of duty on the entry form. Entry made under an actual use provision of the HTSUS may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the HTSUS, provided the port director is satisfied the merchandise will be so used. However, the port director shall require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be used for the purposes stated in the HTSUS.

[T.D. 71-139, 36 FR 10726, June 2, 1971, as amended by T.D. 89-1, 53 FR 51252, Dec. 21, 1988]

§ 10.135 Deposit of duties.

When the requirement of §10.134 has been met the merchandise may be entered or withdrawn from warehouse for consumption without deposit of duty when proof of use will result in free entry, or with deposit of duty at the lower rate when proof of use will result in a lower rate of duty.

[T.D. 71-139, 36 FR 10726, June 2, 1971, as amended by T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.136 Suspension of liquidation.

Liquidation of an entry covering merchandise for which a declaration of intent has been made pursuant to §10.134 and any required deposit of duties made, shall be suspended until proof of use is furnished or the 3-year period allowed for production thereof has expired.

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.137 Records of use.

- (a) *Maintenance by importer.* The importer shall maintain accurate and detailed records showing the use or other

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disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established.

(b) *Retention of records.* The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry.

(c) *Examination of records.* The records required to be kept by paragraph (a) of this section shall be available at all times for examination and inspection by an authorized Customs officer.

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.138 Proof of use.

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer shall submit in duplicate in support of his claim for free entry or for a reduced rate of duty a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

[T.D. 71-139, 36 FR 10727, June 2, 1971]

§ 10.139 Liquidation.

(a) *In general.* Upon satisfactory proof of timely use of the merchandise for the purpose specified by law, the entry shall be liquidated free of duty or at the lower rate of duty specified by law. When such proof is not filed within 3 years from the date of entry or withdrawal from warehouse for consumption, the entry shall be liquidated dutiable under the appropriate subheading of the Harmonized Tariff Schedule of the United States.

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(b) *Exception for blackstrap molasses.* An entry covering blackstrap molasses, as hereinafter defined, may be accepted and liquidated with duty at the lower rate after the filing of the declaration of intent required by § 10.134 and the deposit of estimated duties required by § 10.135 without compliance with §§ 10.136, 10.137, and 10.138. Blackstrap molasses is “final” molasses practically free from sugar crystals, containing not over 58 percent total sugars and having a ratio of

total sugars \times 100/Brix

not in excess of 71. In the event of doubt, an ash determination may be made. An ash content of not less than 7 percent indicates a blackstrap molasses within the meaning of this paragraph.

[T.D. 71-139, 36 FR 10727, June 2, 1971, as amended by T.D. 89-1, 53 FR 51252, Dec. 21, 1988]

IMPORTATIONS NOT OVER \$200 AND BONA FIDE GIFTS

§ 10.151 Importations not over \$200.

Subject to the conditions in § 10.153 of this part, the port director shall pass free of duty and tax any shipment of merchandise, as defined in § 101.1 of this chapter, imported by one person on one day having a fair retail value, as evidenced by an oral declaration or the bill of lading (or other document filed as the entry) or manifest listing each bill of lading, in the country of shipment not exceeding \$200, unless he has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation. Merchandise subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 128.24, 145.31, 148.12, and 148.62, of this chapter).

[T.D. 94-51, 59 FR 30293, June 13, 1994, as amended by T.D. 95-31, 60 FR 18990, Apr. 14, 1995; T.D. 95-31, 60 FR 37875, July 24, 1995; T.D. 97-82, 62 FR 51769, Oct. 3, 1997]